

CUSTODY

U.S. District Court
U.S. District Court for the Northern District of Oklahoma (Tulsa)
CRIMINAL DOCKET FOR CASE #: 4:21-mj-00038-JFJ-1

Case title: USA v. Porter

Date Filed: 01/21/2021

Other court case number: 20-cr-10070-GEB USDC District of
Kansas

Assigned to: Magistrate Judge
Jodi F Jayne

Defendant (1)

Michael R Porter

represented by **Jill Elizabeth Webb**
J Webb Law Firm PLLC
PO BOX 1234
TULSA, OK 74103
918-346-5664
Fax: 918-856-5375
Email: Jill.Webb@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA or Other Appointment

Pending Counts

None

Disposition

Highest Offense Level (Opening)

None

Terminated Counts

None

Disposition

Highest Offense Level
(Terminated)

None

Complaints

18:3606.F Arrest and Return of
Defendant on Supervised Release

Disposition

Plaintiff

USA

represented by **David Nasar**
 DOJ–USAO
 110 W. 7th Street
 Ste 300
 Tulsa, OK 74119
 918–382–2731
 Email: david.nasar@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Government Attorney
(local,state,federal)

Date Filed	#	Page	Docket Text
01/22/2021			ARREST on Charges Pending in Another District(Rule 5) as to Michael R Porter (sdc, Dpty Clk) (Entered: 01/22/2021)
01/22/2021	<u>1</u>		MOTION for Detention by USA as to Michael R Porter [Note: Attorney David Nasar added to party USA(pty:pla).] (Nasar, David) (Entered: 01/22/2021)
01/22/2021	<u>2</u>		MOTION for Hearing (Re: <u>1</u> MOTION for Detention) by USA as to Michael R Porter (Nasar, David) (Entered: 01/22/2021)
01/22/2021	<u>3</u>		MINUTES of Proceedings – held before Magistrate Judge Jodi F Jayne: Initial Appearance in Rule 5 Proceedings held on 1/22/2021 , ruling on motion(s)/document(s): #1 moot, #2 moot, appointing CJA attorney Jill Elizabeth Webb for Michael R Porter, ordering defendant be detained as to Michael R Porter (Re: <u>2</u> MOTION for Hearing , <u>1</u> MOTION for Detention) (Court Reporter: C1) (sdc, Dpty Clk) (Entered: 01/22/2021)
01/22/2021	<u>4</u>		ORDER by Magistrate Judge Jodi F Jayne , appointing CJA attorney as to Michael R Porter (sdc, Dpty Clk) (Entered: 01/22/2021)
01/22/2021	<u>5</u>		MINUTE ORDER by Magistrate Judge Jodi F Jayne <i>The Court reconsiders its ruling during the Initial Appearance held this date that Defendant was not entitled to a detention hearing in the arresting district. Although the charging district must conduct the revocation proceeding under 18 U.S.C. 3148(b), the arresting court may determine whether to release or detain the defendant pending that proceeding. See Fed. R. Crim. P. 40(c). The United States' motion for detention (ECF No. 1) is reinstated, the motion for hearing (ECF No. 2) is granted, and the matter is set for an in–person detention hearing on Monday, January 25, 2021, at 3:30 pm. The Court's transfer order is stayed pending the detention hearing, setting/resetting deadline(s)/hearing(s): (Detention Hearing set for 1/25/2021 at 03:30 PM before Magistrate Judge Jodi F Jayne) as to Michael R Porter (This entry is the Official Order of the Court. No document is attached.)</i> (sdc, Dpty Clk) (Entered: 01/22/2021)
01/25/2021	<u>6</u>		MINUTES of Proceedings – held before Magistrate Judge Jodi F Jayne: Detention Hearing held on 1/25/2021 , ruling on motion(s)/document(s): #1 granted, ordering defendant be detained as to Michael R Porter (Re: <u>1</u> MOTION for Detention) (Court Reporter: c1) (dlg, Dpty Clk) (Entered: 01/26/2021)
01/25/2021	<u>7</u>		ORDER by Magistrate Judge Jodi F Jayne , COMMITMENT to Another District (Rule5) by Magistrate Judge Jodi F Jayne as to Michael R Porter (dlg, Dpty Clk)

		(Entered: 01/26/2021)
01/25/2021	<u>8</u>	ORDER by Magistrate Judge Jodi F Jayne , ordering defendant be detained as to Michael R Porter (dlg, Dpty Clk) (Entered: 01/26/2021)

MIME-Version:1.0
From:CM-ECFMail_OKND@oknd.uscourts.gov
To:Courtmail@localhost.localdomain
Bcc:
--Case Participants: Magistrate Judge Jodi F Jayne (jffintake_oknd@oknd.uscourts.gov,
kimberlie_holland@oknd.uscourts.gov, stephanie_cope@oknd.uscourts.gov)
--Non Case Participants:
--No Notice Sent:

Message-Id:2458345@oknd.uscourts.gov
Subject:Activity in OKND case 4:21-mj-00038-JFJ USA v. Porter - Arrest (Rule 5)
Content-Type: text/html

U.S. District Court

U.S. District Court for the Northern District of Oklahoma

Notice of Electronic Filing

The following transaction was entered on 1/22/2021 at 9:32 AM CST and filed on 1/22/2021

Case Name: USA v. Porter

Case Number: 4:21-mj-00038-JFJ

Filer:

Document Number: No document attached

Docket Text:

ARREST on Charges Pending in Another District(Rule 5) as to Michael R Porter (sdc, Dpty Clk)

4:21-mj-00038-JFJ-1 Notice has been electronically mailed to:

4:21-mj-00038-JFJ-1 Notice has not been electronically mailed to:

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL R. PORTER,

Defendant.

Case No. 21-MJ-00038-JFJ

MOTION FOR DETENTION

The United States moves for pretrial detention of Defendant, pursuant to 18 U.S.C. § 3142(e) and (f).

1. Eligibility of Case. This case is eligible for a detention order because this case involves a (check all that apply):

- ☐ Crime of violence (18 U.S.C. § 3156).
- ☐ Crime of Terrorism (18 U.S.C. § 2332b (g)(5)(B)) with a maximum sentence of ten years or more.
- ☐ Crime with a maximum sentence of life imprisonment or death.
- ☐ Drug offense with a maximum sentence of ten years or more.
- ☐ Felony offense and Defendant has two prior convictions in the four categories listed above, or two State convictions that would otherwise fall within those four categories if federal jurisdiction had existed.
- ☐ Felony offense involving a minor victim other than a crime of violence.
- ☐ Felony offense, other than a crime of violence, involving possession or use of a firearm, destructive device (as those terms are defined in 18 U.S.C. § 921), or any other dangerous weapon.
- ☐ Felony offense other than a crime of violence that involves a failure to register as a Sex Offender (18 U.S.C. § 2250).
- ☒ Serious risk Defendant will flee.
- ☐ Serious risk of obstruction of justice, including intimidation of a prospective witness or juror.

2. Reason for Detention. The Court should detain Defendant because there are no conditions of release which will reasonably assure (check one or both):

- ☒ Defendant's appearance as required.
- ☒ Safety of any other person and the community.

3. Rebuttable Presumption. The United States will invoke the rebuttable presumption against Defendant under § 3142(e). The presumption applies because there is (check all that apply):

- ☐ Probable cause to believe defendant committed offense within five years of release following conviction for a qualifying offense committed while on pretrial release.
- ☐ Probable cause to believe Defendant committed drug offense with a maximum sentence of ten years or more.
- ☐ Probable cause to believe Defendant committed a violation of one of the following offenses: 18 U.S.C. §§ 924(c), 956 (conspiracy to murder or kidnap), 2332b (act of terrorism), or 2332b(g)(5)(B) (crime of terrorism).
- ☐ Probable cause to believe defendant committed an offense involving a victim under the age of 18 under 18 U.S.C. §§ 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1) through 2252(a)(3), 2252A(a)(1) through 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425.

DATED this 22nd day of January, 2021.

Respectfully submitted,

R. TRENT SHORES
UNITED STATES ATTORNEY

/s/ David A. Nasar

DAVID A. NASAR, NY Reg. No. 4222568
Assistant United States Attorney
110 West Seventh Street, Suite 300
Tulsa, Oklahoma 74119
(918) 382-2700

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 21-MJ-00038-JFJ
)	
MICHAEL R. PORTER,)	
)	
Defendant.)	
)	

MOTION FOR DETENTION HEARING

COMES NOW the United States of America, pursuant to 18 U.S.C. § 3142(e) and (f), and hereby requests that the Court hold a hearing pending trial to determine whether any condition, or combination of conditions, as set forth in 18 U.S.C. § 3142(c), will reasonably assure the appearance of the Defendant as required and the safety of any other person and the community.

Dated this 22nd day of January, 2021.

Respectfully submitted,

R. TRENT SHORES
UNITED STATES ATTORNEY

/s/ David A. Nasar

DAVID A. NASAR, NY Reg No. 4222568
Assistant United States Attorney
110 West Seventh Street, Suite 300
Tulsa, Oklahoma 74119
(918) 382-2700

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

United States of America

Plaintiff(s),

vs.

Case No.: 21-mj-038-001-JFJ

Michael R Porter

Defendant(s).

Criminal Information Sheet

Date: 1/22/21

Interpreter: Yes ☐ No ☒

Magistrate Judge Jayne

Deputy Stephanie Cope

USPO A. Tyler

Date of Arrest: 1/21/21

Arrested By: USM

☒ Detention Requested by AUSA

Bail Recommendation: Choose an item.

☐ Unsecured**Additional Conditions of Release:**

- ☐ a. ☐ b. _____ ☐ p (☐ 1, ☐ 2, ☐ 3, ☐ 4, ☐ 5, ☐ 6)
☐ c. ☐ d. _____ ☐ q (☐ 1, ☐ 2, ☐ 3, ☐ 4, ☐ 5, ☐ 6, ☐ 7, ☐ 8)
☐ e. _____ ☐ r (☐ 1, ☐ 2, ☐ 3, ☐ 4, ☐ 5, ☐ 6)
☐ f. ☐ g. ☐ h. ☐ i. ☐ j. ☐ s.
☐ k. ☐ l. ☐ m. ☐ n. ☐ o. ☐ t. (other) _____

Defendant Requests Federal Public Defender/Ct. Appt. Counsel: ☒ Yes ☐ No

Defendant's Attorney: Jill Webb

☐ FPD; ☐ Ct. Appt; ☐ Ret Counsel

AUSA: David Nasar

MINUTES:Interpreter: _____; ☐ Sworn

☒ Defendant appears in person for IA on: ☐ Indictment; ☐ Information; ☐ Complaint; ☐ Petition; ☒ Rule 5
 with: ☐ Ret Counsel; ☐ FPD; ☒ Ct. Appt; ☐ w/o Counsel

☒ Financial Affidavit received and FPD/CJA appointed; ☒ Present ☐ Not Present

Defendant's name as reflected in the indictment/information/complaint/petition/Rule 5 is the true and correct legal name:

☐ Verified in open court

☐ Corrected by interlineation to _____
 to reflect Defendant's true and correct name and all previous filings are amended by interlineation to reflect same.

☐ Unable to verify in open court: ☐ U.S. Atty. to verify & advise court; ☐ Defendant's Attorney to verify & advise court;

Waivers executed and filed: ☐ of Indictment; ☐ of Preliminary Exam; ☐ of Detention Hearing; ☒ of Rule 5 Hearings

☐ Bond set for _____; Bond and conditions of release executed

☐ Government's Motion for Detention and Detention Hearing filed in open court☐ Arraignment held and Defendant pleads Not Guilty; Court accepts plea; ☐ Scheduling dates to be mailed to counsel☐ Initial Appearance continued to: _____ at _____ a.m./p.m.☐ Arraignment scheduled: _____ at _____ a.m./p.m.☐ Detention Hearing scheduled: _____ at _____ a.m./p.m.☐ Preliminary Exam scheduled: _____ at _____ a.m./p.m.☒ Defendant remanded to custody of U.S. Marshal: ☒ Pending further proceeding; ☐ Pending release on bond for treatmentMot. for Detention # 1: ☐ Granted; ☐ Denied; ☒ Moot Mot. for Hearing # 2: ☐ Granted; ☐ Denied; ☒ Moot

Additional Minutes: SEE ATTACHED

Additional Minutes:

Defendant waives right to identity hearing and production of warrant. Court finds not entitled to any hearings in this district and ordered Defendant transferred to Kansas for purpose of that court conducting necessary proceedings under 18 U.S.C. § 3148(b).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

United States of America,

Plaintiff,

vs.

Case No. 21-mj-00038-JFJ

Michael R Porter ,

Defendant.

ORDER APPOINTING COUNSEL

Defendant has completed an affidavit as to his/her financial ability to employ counsel. Upon review, the Court finds that Defendant is financially unable to obtain counsel. In accordance with the Northern District of Oklahoma Plan for Implementing the Criminal Justice Act of 1984, the Court finds and orders as follows:

_____, the Federal Public Defender is appointed to represent Defendant in all further proceedings until relieved by order of the Court.

✓ Jill Webb _____, an attorney from the Court's panel of private attorneys, established pursuant to the Criminal Justice Act for the Northern District of Oklahoma, is appointed to represent Defendant in all further proceedings until relieved by order of the Court.

_____ the Court finds that Defendant has the financial ability to make regular, periodic payments to reimburse the government for the reasonable costs of providing Defendant with representation. The Court hereby ORDERS that the defendant pay to the Clerk of the Court \$_____ per month, on or before the 15th day of each month, continuing until the government has been fully reimbursed for all reasonable costs of providing representation to Defendant, or until further order of the Court.

_____ Defendant will reimburse the government for the reasonable cost of providing representation in accordance with his/her ability to pay as determined by further order of the court.

Date: 1/22/2021



Jodi F. Jayne
United States Magistrate Judge

MIME-Version:1.0
From:CM-ECFMail_OKND@oknd.uscourts.gov
To:Courtmail@localhost.localdomain
Bcc:
--Case Participants: David Nasar (caseview.ecf@usdoj.gov, david.nasar@usdoj.gov, kim.jackson@usdoj.gov, sara.conley@usdoj.gov), Jill Elizabeth Webb (jill.webb@gmail.com), Magistrate Judge Jodi F Jayne (jfjintake_oknd@oknd.uscourts.gov, kimberlie_holland@oknd.uscourts.gov, stephanie_cope@oknd.uscourts.gov)
--Non Case Participants: Probation Presentence Investigation Unit (intakepsr_oknp@oknd.uscourts.gov), United States Marshal (okn.usms.ops@usdoj.gov)
--No Notice Sent:

Message-Id:2458947@oknd.uscourts.gov
Subject:Activity in OKND case 4:21-mj-00038-JFJ USA v. Porter - Order
Content-Type: text/html

U.S. District Court

U.S. District Court for the Northern District of Oklahoma

Notice of Electronic Filing

The following transaction was entered on 1/22/2021 at 6:29 PM CST and filed on 1/22/2021

Case Name: USA v. Porter
Case Number: 4:21-mj-00038-JFJ
Filer:
Document Number: 5(No document attached)

Docket Text:

MINUTE ORDER by Magistrate Judge Jodi F Jayne *The Court reconsiders its ruling during the Initial Appearance held this date that Defendant was not entitled to a detention hearing in the arresting district. Although the charging district must conduct the revocation proceeding under 18 U.S.C. 3148(b), the arresting court may determine whether to release or detain the defendant pending that proceeding. See Fed. R. Crim. P. 40(c). The United States' motion for detention (ECF No. 1) is reinstated, the motion for hearing (ECF No. 2) is granted, and the matter is set for an in-person detention hearing on Monday, January 25, 2021, at 3:30 pm. The Court's transfer order is stayed pending the detention hearing, setting/resetting deadline(s)/hearing(s): (Detention Hearing set for 1/25/2021 at 03:30 PM before Magistrate Judge Jodi F Jayne) as to Michael R Porter (This entry is the Official Order of the Court. No document is attached.) (sdc, Dpty Clk)*

4:21-mj-00038-JFJ-1 Notice has been electronically mailed to:

David Nasar david.nasar@usdoj.gov, caseview.ECF@usdoj.gov, kim.jackson@usdoj.gov,
sara.conley@usdoj.gov

Jill Elizabeth Webb Jill.Webb@gmail.com, jill.webb@gmail.com

4:21-mj-00038-JFJ-1 Notice has not been electronically mailed to:

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

United States of America,

Plaintiff,

vs.

Case Number: 21-mj-00038-JFJ-1Date: 1/25/2021
Michael R Porter,
 Defendant(s).

 Court Time: 3:41pm - 4:03pm Break
4:16pm - 4:21pm

MINUTE SHEET

Jodi F. Jayne, U.S. Magistrate Judge

Dusty Gross, Deputy Clerk

Court Room C 1

Interpreter: _____ ☐ SwornCounsel for Plaintiff: David NasarCounsel for Defendant: Jill Elizabeth Webb Appt. (Appt./Ret./FPD)

Detention and/or Preliminary Hearing

Case called for: ☒ Detention Hearing, ☐ Preliminary Hearing;☒ Defendant appears in custody with counsel;Defense waives: ☐ Preliminary Hearing, ☐ Detention Hearing, waiver(s) executed;☐ Government withdraws their Motion for Detention # _____;☐ Defense counsel stipulates there is probable cause;☒ Proffer(s) made;☒ Witness(es) sworn and testimony given;☒ Arguments heard;☐ Court finds there is probable cause;Motion for Detention (Dkt 1): ☒ granted, ☐ denied, ☐ moot;☐ Court finds there are conditions which defendant can be released; Defendant ordered released;☐ Bond set at _____, Bond and Conditions of Release executed;☒ Defendant detained and remanded to custody of U.S. Marshal, ☒ Detention Order to be entered;☐ Exhibit(s) returned to counsel.

Additional Minutes:

Government's Witnesses:

Defendant's Witnesses:

Michael R. Porter
3:52pm - 4:01pm

Government's Exhibits:

Defendant's Exhibits:

UNITED STATES DISTRICT COURT

for the

Northern District of Oklahoma

United States of America

v.

Michael R Porter

Defendant

Case No. 21-mj-00038-JFJ

Charging District's

Case No. 20-cr-10070-GEB

COMMITMENT TO ANOTHER DISTRICT

The defendant has been ordered to appear in the USDC District of Kansas.

The defendant may need an interpreter for this language:

The defendant: ☐ will retain an attorney.☒ is requesting court-appointed counsel.

The defendant remains in custody after the initial appearance.

IT IS ORDERED: The United States marshal must transport the defendant, together with a copy of this order, to the charging district and deliver the defendant to the United States marshal for that district, or to another officer authorized to receive the defendant. The marshal or officer in the charging district should immediately notify the United States attorney and the clerk of court for that district of the defendant's arrival so that further proceedings may be promptly scheduled. The clerk of this district must promptly transmit the papers and any bail to the charging district.

Date: 1/25/2021



Judge's signature

Jodi F. Jayne, U.S. Magistrate Judge

Printed name and title

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

United States of America,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 21-MJ-38-JFJ
)	
Michael Porter,)	
)	
Defendant.)	

ORDER OF DETENTION PENDING
PRETRIAL RELEASE REVOCATION PROCEEDING IN CHARGING DISTRICT

On Friday, January 22, 2021, the Court conducted an Initial Appearance by video teleconference on an arrest warrant issued from the District Court of Kansas based on Defendant's alleged violations of pretrial release. *See* Fed. R. Crim. P. 40(b); Fed. R. Crim. P. 5(c)(3). The Court advised Defendant pursuant to Fed. R. Crim. P. 5(d) and appointed counsel. Defendant waived his right to an identity hearing but requested any other hearings to which he may be entitled in the district of arrest. The Court found Defendant was not entitled to a detention or preliminary hearing in this district, based on the language of 18 U.S.C. § 3148(b). Based on the existence of the arrest warrant and the Court's finding that Defendant was the same person named in the arrest warrant, the Court ordered Defendant be remanded to the custody of the U.S. Marshal and transferred to the charging district pursuant to Fed. R. Crim. P. 5(c)(3)(D).

Following the hearing the Court reconsidered this decision, in light of Rule 40(c) and the 2006 amendment advisory committee's notes, which explain a magistrate judge has authority to set conditions of release for a person arrested for violation of conditions of release, pending the revocation proceeding in the charging district. *See* Fed. R. Crim. P. 40(c) & 2006 advisory committee's notes (amendment intended to "fill a perceived gap in the rule that a magistrate judge in the district of arrest lacks authority to set release conditions for a person arrested only for violation of conditions of release"). *See generally United States v. Zu Quan Zhu*, 215 F.R.D. 21, 26 (D. Mass. 2003) (holding that arresting district had no authority to release or detain pending a pretrial revocation proceeding in another district, which prompted 2006 amendment to Rule 40). The Court stayed its transfer order and set the matter for an in-person detention hearing. *See* ECF No. 5.

On January 25, 2021, pursuant to Fed. R. Crim. P. 40(c) and 18 U.S.C. § 3142(g), the Court conducted a detention hearing **solely** to determine whether Defendant would be released or detained pending a pretrial revocation proceeding in the charging district. Pursuant to Rule 40(c), the arresting court "may modify any previous release or detention order issued in another district, but must state in writing the reasons for doing so." The Court may consider the nature and circumstances of the alleged violations of pretrial release, but may not reach determinations regarding whether there is probable cause to believe a new crime was committed or whether there

is sufficient evidence to conclude that a violation occurred. Those determinations are reserved for the revocation proceeding conducted in the charging district. *See United States v. Viveiros*, No. 87-0803RC, 1987 WL 881557, at *3 (D. Mass. Mar. 5, 1987). *See also United States v. Jaitly*, No. 09-644-M, 2009 WL 1675086, at *7 (E.D. Pa. June 15, 2009) (holding there is no right to a preliminary hearing in the arresting district, as this would “usurp the role of the judge in the charging district”). The Court finds it proper to generally consider the 18 U.S.C. § 3142(g) factors, to the extent they apply, in determining whether Defendant poses a risk of non-appearance or a danger to the community pending his revocation proceeding.

Written Statement of Reasons for Detention Pending Revocation Proceeding

The United States’ motion for detention pending the revocation proceeding in the charging district is granted. The United States has shown that Defendant poses a significant risk of flight and non-appearance in the charging district. While on supervision, Defendant allegedly failed to report for drug testing on seven occasions and tested positive for amphetamines on at least two occasions. Most importantly, it is alleged that Defendant failed to report to his residence in Ponca City, Oklahoma, for installation of location monitoring equipment, and then also failed to report to the probation office in the Western District of Oklahoma the next day. The nature of the alleged violations weighs in favor of detention. Defendant’s testimony that he will appear in Kansas and abide by conditions pending that proceeding is not supported by the alleged past conduct. Further, Defendant expressed continuing difficulties of being supervised in the district originally found appropriate by the charging court, which presents an ongoing risk of non-compliance and non-appearance. In short, the Court has no confidence Defendant will abide by any additional conditions aimed at ensuring that he appears in Court, and detention is required pending the pretrial release revocation proceeding. The Court has considered that the underlying charge is a misdemeanor and that Defendant does not have prior felony convictions but finds other factors weigh in favor of detention. This ruling is limited in nature and is not a revocation determination under 18 U.S.C. § 3148(b), which is reserved for the charging district.

Dated this 25th day of January, 2021.


JODI F. JAYNE, MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT